

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JEFFREY PAUL SCHUETT,

Petitioner,

Case No. 11-20574

v

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING
PETITIONER'S MOTION TO VACATE, GRANTING RESPONDENT'S MOTION TO
DISMISS, DENYING CERTIFICATE OF APPEALABILITY AND DENYING
PERMISSION TO PROCEED IN FORMA PAUPERIS ON APPEAL**

On September 6, 2012, Jeffrey Schuett pleaded guilty to felon in possession of a firearm, 18 U.S.C. § 922(g)(1). Plea Agreement, ECF No. 33. He was sentenced to 180 months' imprisonment, to run concurrent to his state sentence. Judgment, ECF No. 44.

On May 20, 2014, Schuett filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Respondent filed a motion to dismiss Schuett's motion to vacate on August 12, 2014.

I

On September 12, 2014, Magistrate Judge Patricia T. Morris issued a report recommending that Schuett's motion to vacate be denied and that Respondent's motion to dismiss be granted. Magistrate Judge Morris concluded that Schuett's ineffective assistance of counsel claim was meritless, and she further concluded that Schuett's two claims for errors in sentencing had been waived in the plea agreement.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report,

neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

II

Before Schuett may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254.

Having considered the matter, the Court concludes that Schuett has not made a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted in this case. The Court further concludes that Schuett should not be granted leave to proceed *in forma pauperis* on appeal, as any appeal would be frivolous. *See* Fed. R. App. P. 24(a).

III

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 54) is **ADOPTED**.

It is further **ORDERED** that Petitioner's motion to vacate his sentence pursuant to 28 U.S.C. § 2255 (ECF No. 47) is **DENIED**.

It is further **ORDERED** that Respondent's motion to dismiss (ECF No. 53) is **GRANTED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

It is further **ORDERED** that permission to proceed *in forma pauperis* on appeal is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: October 28, 2014

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail and on Jeffrey Paul Schuett #46369039, Gilmer Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 6000, Glenville, WV 26351 by first class U.S. mail on October 28, 2014.

s/Tracy A. Jacobs
TRACY A. JACOBS